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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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January 4, 1995

William F. Caton, Acting, Secretary
Federal Communications Commission
Washington, DC 20554

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Re: Report of Ex Parte Communication
MM Docket No. 87-268

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, submitted herewith is a copy of a written *ex parte* communication to the Chairman concerning matters at issue in MM Docket 87-268.

Please associate this material with the record in that docketed proceeding.

Very truly yours,



Peter Tannenwald
Counsel for the Community
Broadcasters Association

cc: Chairman Reed Hundt
Mr. Sherwin Grossman

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WJAN-TV

Sherwin Grossman

President

Mr. Reed Hundt, Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

December 30, 1994

Dear Chairman Hunt,

I am writing to you on behalf of the Community Broadcasters Association, and in turn the LPTV industry to ask you to give the industry the recognition it deserves, but has never achieved, in the Advanced Television System (ATV) process.

Within the next couple of months, the Advanced Television Test Center will be submitting its findings to the Commission with respect to the various possible ATV technologies, including the "Grand Alliance." The Commission will then presumably go forward with a Table of ATV Allotments.

Until now, LPTV has been completely ignored in the design of the ATV allotment table, on the ground that it is "too complicated" to take LPTV into account while still accommodating all the full power stations. But it is not always so complicated -- that is only an excuse. There are some things that can and must be done to keep LPTV stations from being unnecessarily stepped on by the full power industry, which will hardly mourn the loss of competition if LPTV stations are put out of business.

We both know how well suited LPTV stations are to provide the localized services that are the bedrock of the Communications Act. Many local programs are available only on LPTV and nowhere else -- including local programs for smaller communities, ethnic programming, and special interest programming that the full power stations cannot afford to carry without mass audiences, usually the lowest common denominator.

When the ATV docket first started, in 1987 was far less developed than it is today. Perhaps there was some justification for not protecting LPTV stations at that time. However, today, there are more than 1500 licensed LPTV stations -- more than the number of licensed full power stations. Even if the large number of stations in Alaska and those simply rebroadcasting full power stations are ignored, there are hundreds of originating LPTV stations, representing an investment of hundreds of millions of dollars and employment for thousands of American workers. These are lively and viable stations, providing service to the public that in no way is "secondary," the way their frequencies are treated.

Sherjan Broadcasting Co., Inc.

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President

Mr. R. Hundt

Dec. 23, 1994

Page Two

It is no longer logical or reasonable to completely ignore these LPTV stations when designing an ATV allotment table. I offer the following suggestions:

1. The database used to design the ATV allotment table should include LPTV stations, so that the designers at least know the impact they are having on LPTV.

2. No LPTV station should be displaced by a full power ATV allotment unless and until every full power station has been accommodated as much as possible and there is no other way to provide an ATV allotment for an existing full power station except by displacement.

3. No LPTV station should be displaced by a full power ATV station until all ATV allotments in a community have been used up by full power ATV stations that are actually on the air, and a full power station is ready to begin broadcasting an ATV signal but cannot do so without the displacement. In other words, even if there are not enough full power ATV allotments to go around without displacing an LPTV station, the full power ATV stations must actually be activated on all non-displacing allotments before a displacing allotment can be activated, even if that means that full power stations must rearrange which of them gets which ATV allotment as they go on the air with ATV.

4. Once all full power stations are accommodated, an LPTV station which can find an additional ATV channel that does not interfere with full power should be permitted to occupy the ATV channel on the same basis as a full power station -- without that channel being opened up to applications from the general public.

5. To encourage investment in ATV construction, LPTV ATV channels should not be secondary the way NTSC LPTV channels are. They should be displaceable, if at all, under only very extraordinary circumstances and only when a substitute LPTV ATV channel can be found for the displaced station.

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Page Three

6. When a full power ATV channel is open to applications from the general public, an application by an operating LPTV station in the same community should be given a very heavy preference in the comparative decision-making process, based on the LPTV applicant's local television broadcast experience, which is a creditable and non-speculative predictor of the service that can be expected on the full power channel.

Let's face it -- the existing television "establishment" is not going to stick up for competition from LPTV, notwithstanding the tens of millions of dollars invested in LPTV and the public service and jobs at stake. But the Commission is the guardian of the public interest. Your job is to make sure that all the public is served, not just the largest and most entrenched interests. Justice and the public interest require that you intervene now, while there is still time to influence the policy that will dictate the creation of the ATV allotment table.

Very sincerely yours,



Sherwin Grossman, President
Community Broadcasters Association

cc: CBA Board of Directors

SG/meg

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